IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3758 of 1997
With
SPECIAL CIVIL APPLICATION No. 3760 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAY I PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
MS ARCHANA ACHARYA ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR AR MAJMUDAR for Respondent(s) : 3,
MR ASIM J PANDYA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/10/2006

COMMON ORAL JUDGMENT

As the common questions of law and facts arise in both these petitions, they are heard together and being disposed by this common judgment and order.

2. By way of this petition under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, order and/or direction directing the respondent Government to give appointment to the petitioners on the post of Assistant Engineer (Civil) on the basis of their standing in the select list.

3. It is the case on behalf of the respective petitioners that applications were invited by the Gujarat Public Service Commission ("G.P.S.C." for short) by giving public advertisement for direct selection to fill up 200 vacancies in Gujarat Engineer Service Cadre Class-II, Assistant Engineer (Civil). Pursuant to the said advertisement, they submitted requisite applications and after due process of selection, a select list for 90 candidates was prepared and published by the G.P.S.C. And the petitioners were shown at Sr.No.7 and 41 respectively. It is further submitted that the petitioners were accordingly communicated their position in the select list. It is submitted that in spite of the above,

the petitioners were not given appointment orders. The petitioners have placed reliance on the instructions of the General Administration Department of the Government of Gujarat dated 16.1.1969 which prescribes that the candidates recommended by the G.P.S.C. Are required to be offered appointment within the period of two months and under no circumstances later than six months after the recommendations are received from the GPSC, however, appointment orders were not given to the petitioners and therefore, the present special civil application is filed for aforesaid reliefs.

4. Affidavit-in-reply is filed on behalf of the respondnets.

5. It is submitted in the affidavit-in-reply that GPSC has recommended the names of the Assistant Engineers (Civil) in July, 1993 and February, 1994 and the Government in Road and Building Department has processed the cases in August / September, 1993 to seek permission of the Government in Finance Department but in the mean time, the Government has imposed economic ban and has imposed economy in the expenditure and suggested review in cadre and implemented 10 % cut and considering 10 % cut in the cadre strength imposed by the Finance Department, the Department has not filled up the vacancies and consequently, not given appointment orders to the

petitioners and other appointees. It is submitted that the Finance Department has not given permission to fill up these posts.

6. It is true that the petitioners were placed in the select list on the basis of their merits. However, mere inclusion of their names in the select list does not confer any right in favour of the petitioners and appointments are required to be made by the State Government subject to availability of the posts and the vacancies. When there is no need and / or there is no vacant post which can be filled up by giving appointment to the petitioners, no relief can be granted in favour of the petitioners to appoint them on the basis of the select list. There are justifiable reasons given by the State Government for not giving appointment orders to the petitioners in absence of any vacant posts due to circumstances submitted in the affidavit-in-reply which are stated hereinabove. Under the circumstances and considering the affidavit-in-reply, the petitioners are not entitled to any relief as prayed for.

7. In view of above discussion, both these petitions are required to be dismissed and the same are dismissed accordingly.

8. Rule, in each petition, stands discharged.

However, there shall be no order as to costs.

[M.R. Shah, J.]

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